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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,139	02/05/2001	Gregory Hagan Moulton	UND004	5504
7590	01/05/2006		EXAMINER	
William J. Kubida, Esq. Hogan & Hartson, LLP 1200 17th Street Suite 1500 Denver, CO 80202			ZAND, KAMBIZ	
		ART UNIT	PAPER NUMBER	
			2132	

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/777,139	MOULTON ET AL.
	Examiner	Art Unit
	Kambiz Zand	2132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 December 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-17 and 19-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1,3-17 and 19-27 is/are allowed.
- 6) Claim(s) 28-32 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 February 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this section can be found in the prior office action.
2. The prior office actions are incorporated herein by reference. In particular, the observations with respect to claim language, and response to previously presented arguments.
3. Claims 2, 18 and 33-36 have been cancelled.
4. Claims 1 and 17 have been amended.
5. Claims 1, 3-17 and 19-32 are pending.

Response to Arguments

6. Applicant's arguments filed 09/09/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are design choice only (A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art if prior art has the capability to do so perform (See MPEP 2114 and Ex Parte Masham, 2 USPQ2d 1647 (1987)).

Claim Rejections - 35 USC § 102

7. **Claims 28-32** are rejected under 35 U.S.C. 102(e) as being anticipated by Burning, III et al (2002/0035667 A1).

As per claim 28 Burning, III et al (2002/0035667 A1) teach a data storage system comprising: a peer-to-peer network of three or more of storage devices, each storage device having means for communicating state information with other storage devices, at least one storage device comprising means for receiving storage requests from external entities, and at least one storage device comprising means for causing read and write operations to be performed on others of the storage devices (see abstract; fig.1-2 and associated text; paragraph 0013-0024 where data remains available regardless of failure or unavailability of a storage node whether external or internal entities and where in paragraph 0018 disclose at least six storage devices).

As per claim 29 Burning, III et al (2002/0035667 A1) teach the system of claim 28 wherein each of the storage devices comprises means for causing read and write operations to be performed on others of the storage devices (see fig.2 and associated text).

As per claim 30 Burning, III et al (2002/0035667 A1) teach the system of claim 28 wherein each of the storage devices comprises data structures defined to configure at least two geographically distant ones of the data storage devices as a unitary volume of

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storage (see paragraph 0022 where remote corresponds to applicant's geographically distance; fig.2 and associated text).

As per claim 31 Burning, III et al (2002/0035667 A1) teach the system of claim 30 further comprising: a network coupling to each of the data storage devices; and a storage controller coupled to the network for logically combining the at least two data storage devices into a single logical storage device (see paragraph 0014 and 0020).

As per claim 32 Burning, III et al (2002/0035667 A1) teach a distributed data storage array comprising: a plurality of network connected storage nodes; a network interface within each storage node for receiving data and control information from other storage nodes; a network interface within at least one storage node for receiving data storage access requests from external sources; and storage management processes within the at least one storage node operable to distribute data storage for a logically contiguous quantity of data across multiple storage nodes (see abstract; fig.1-2 and associated text; paragraph 0013-0024 where data remains available regardless of failure or unavailability of a storage node).

Allowable Subject Matter

8. Claims 1, 3-17 and 19-27 are allowed.

Conclusion

9. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

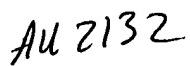
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kambiz Zand whose telephone number is (571) 272-3811. The examiner can normally be reached on Monday-Thursday (8:00-5:00). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (571) 272-3799. The fax phone numbers for the organization where this application or proceeding is assigned are 571-272-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available

through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kambiz Zand

01/03/2006



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